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C O N F I D E N T I A L SECTION 01 OF 02 CARACAS 000987

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TAGS: [PGOV](#) [KDEM](#) [VE](#)  
SUBJECT: BIG BROTHER IS WATCHING: CONTROVERSIAL CRIMINAL  
CODE REFORM SET TO PASS

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Classified By: ACTING POLITICAL COUNSELOR DARNALL STEUART,  
FOR REASON 1.4(D)

11. (C) Summary: The Chavista-dominated National Assembly (AN) is poised to pass yet another reform to Venezuela's criminal penal code (COPP) which would expand state control over criminal proceedings and, most controversially, require banks and telecommunications companies to record and make available to state officials all phone calls, emails, and banking transactions in Venezuela. This re-packaging of the deeply unpopular "snitch law" that President Chavez decreed and then was forced to repeal in 2008, places the "snitching" onus on companies rather than individuals. Industry experts tell us that the reform's requirements are technologically infeasible -- and that the state will nonetheless be able to sanction them for non-compliance. With many Venezuelans and much of the student population on vacation in August, the Government of the Bolivarian Republic of Venezuela (GBRV) may hope that passing the COPP in the coming weeks will prevent a coordinated public backlash. End Summary.

12. (SBU) The AN passed the first reading of the COPP reform June 25, and the state-run Bolivarian News Agency (ABN) announced July 20 that the second discussion of the reform -- and presumably the final vote and promulgation -- would commence the first week of August. United Socialist Party of Venezuela (PSUV) AN Deputy Tulio Jimenez announced July 20 that the final "public consultation" would occur two days later, with an event in Guarenas. AN Deputy Saul Ortega, of PSUV, pledged that the reform is a means of combating insecurity. AN President Cilia Flores added that the opposition's criticisms of the reform proposal were another example of "media terrorism."

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LEY SAPO RETURNS  
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13. (C) Perhaps the most controversial aspect of the COPP reform is the requirement for telecommunications companies to record all private communications and email exchanges that take place in Venezuela, and make them available to state officials upon demand. Similarly, banks must also record and make available their clients' banking records. According to the bill's language, banks and companies are required to obey information requests from the state "for reasons of necessity or urgency" in the "term required, or in real time." The bill asserts that the purpose is to "identify and locate" individuals who are guilty of "punishable acts" and to protect victims who are in imminent danger.

14. (C) Criminal law expert Magaly Vasquez opined to Poloffs July 10 that this part of the COPP is a re-packaged version of the "snitch law" ("ley sapo") that Chavez promulgated and then revoked in 2008 after a fierce public backlash. The 2008 law placed the spying onus on individuals, according to Vasquez, while the COPP places the responsibility on banking and telecommunications companies -- thus making this version less likely to draw public ire. Furthermore, she noted that the 1991 Law for the Protection of Private Communication allows the state to access this same information in cases related to drug trafficking, kidnappings, and so on, but stipulates that a judge must be notified. Essentially, Vasquez argued, the reform cannot really be considered a counter-crime measure because it is simply reaffirming legislation that has been in effect for the past 18 years. The major change is granting state officials unprecedented freedom to demand the information on what amounts to a whim. She cautioned that the reform bill does not stipulate the involvement of a judge. Companies could be fined or even closed for failing to comply.

15. (C) Vice President of Netuno telecommunications company Alberto Schaffenorth told Econcouns July 20 that COPP's requirements are confusing and technologically infeasible. He noted that the storage alone for every phone call and email message sent throughout Venezuela would be impossibly large for any company to hold. Schaffenorth argued that the GBRV knows that the bill's stipulations are impossible to comply with, and that it gives the state a threat to hold over the telecommunications industry's head -- at any moment, the state can sanction companies for failing to comply with impossible requirements. He said he had spoken with AN deputies who were receptive to his complaints, but he seemed pessimistic that the legislation's substance would change significantly before its final passage. Schaffenorth noted

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that the spirit of the law itself is deeply troubling, because it opens the door to just about any government official to claim access to private information without even a judge's order. Schaffenorth predicted that this could create chaotic witchhunts as "anyone with a badge" can demand banking information, phone calls, or email messages sent or received by a particular target.

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A RETURN TO THE FOURTH REPUBLIC  
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16. (C) Vasquez related that the COPP reform is the fifth reform in the ten years the code has been in effect. She noted that the current code was first introduced in 1999, dramatically changing criminal procedures which hitherto had placed the burden of proof on the accused -- resulting in long pre-trial detention periods before the accused were given a chance to plead their case in court. Vasquez said, however, that the recent reforms were trending the criminal code back to its pre-1999 status probably to combat a perception that the criminal system is too lenient towards criminals. For example, Vasquez noted that the new reform would allow 45 days of pre-trial detention, versus the 15 and then 30 days that the code had previously allowed. It would also reduce what benefits prisoners enjoy, including conditional liberty and work programs outside of prisons. Vasquez cautioned that curtailing these programs would worsen the already tense and violence-prone conditions inside of penitentiaries.

17. (C) Vasquez noted that the new COPP would shift considerable power to state officials, and particularly the attorney general's office, in a number of subtle ways. For example, there would be no consequences if a state prosecutor fails to make a court appearance, and would also likely result in the defendant remaining in jail for additional months before a new court date is set. Public defenders, however, would face sanctions for failing to appear. Vasquez

said this will be damaging to what has become a strong, well-educated young corps of public defenders, many of whom started the job in the wake of the mass retirement that followed the new code's passage in 1999. The Public Defender's office (Defensoria del Pueblo) is empowered under the reform law to request the revision of a court sentence for public officials in cases where they claim there is a violation of human rights. The bill also allows the TSJ to issue direct sentencing in cases where they detect an "erroneous application of a legal precept" without initiating a new trial.

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COMMENT  
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18. (C) The COPP reform represents yet another piece of legislation that further centralizes GBRV authority and chips away at Venezuelans' right to privacy in their personal communications and banking transactions. It also opens these private companies to state sanctions or even takeover for failing to comply with what appears to be impossible requirements. Observers often note that the government violates existing legislation with impunity, but implementing new laws that permit outrageous state intrusion into the private sphere creates a veil of legal legitimacy for the Chavez administration's increasingly authoritarian tack. End Comment.  
CAULFIELD